

Introduced by Senator Vargas

February 16, 2011

An act to amend Section 580e of the Code of Civil Procedure, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 412, as introduced, Vargas. Mortgages: deficiency judgments.

Existing law prohibits a deficiency judgment if real property or an estate for years has been sold by the mortgagee or trustee under power of sale in the mortgage or deed of trust. Existing law also prohibits a deficiency judgment under a note secured by a first deed of trust or first mortgage for a dwelling of not more than 4 units in any case in which the trustor or mortgagor sells the dwelling for less than the remaining amount of the indebtedness due at the time of sale with the written consent of the holder of the first deed of trust or first mortgage, and provides that written consent of the holder of the first deed of trust or first mortgage to that sale obligates the holder to accept the sale proceeds as full payment and to fully discharge the remaining amount of the indebtedness on the first deed of trust or first mortgage.

This bill would define "note" for these purposes as one made by a natural person, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 580e of the Code of Civil Procedure is
2 amended to read:

1 580e. (a) No judgment shall be rendered for any deficiency
2 under a note secured by a first deed of trust or first mortgage for
3 a dwelling of not more than four units, in any case in which the
4 trustor or mortgagor sells the dwelling for less than the remaining
5 amount of the indebtedness due at the time of sale with the written
6 consent of the holder of the first deed of trust or first mortgage.
7 Written consent of the holder of the first deed of trust or first
8 mortgage to that sale shall obligate that holder to accept the sale
9 proceeds as full payment and to fully discharge the remaining
10 amount of the indebtedness on the first deed of trust or first
11 mortgage.

12 (b) If the trustor or mortgagor commits either fraud with respect
13 to the sale of, or waste with respect to, the real property that secures
14 the first deed of trust or first mortgage, this section shall not limit
15 the ability of the holder of the first deed of trust or first mortgage
16 to seek damages and use existing rights and remedies against the
17 trustor or mortgagor or any third party for fraud or waste.

18 (c) This section shall not apply if the trustor or mortgagor is a
19 corporation or political subdivision of the state.

20 (d) *For purposes of this section, “note” means a note made by*
21 *a natural person or by a trustee of a trust created by a natural*
22 *person for a loan made primarily for personal, family, or household*
23 *purposes. “Note” does not include a note made for a loan primarily*
24 *for agricultural, business, or commercial purposes, including a*
25 *loan to finance the construction of a residential subdivision.*